The tibetan issue in international law

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PREMISE

Historically, Tibet was identified in the regions of Amdo , Kham , U- Tsang and bordered to the east and north by China, on the south by India , Bhutan, Nepal and India to the east .

After the Chinese invasion of Tibet in 1950 became the Tibetan Autonomous Region (TAR), which is identified with the U- Tsang and western Kham , while Amdo was annexed to the Chinese regions of Qinghai and Gansu , and the eastern Kham absorbed by the Chinese regions of Sichuan and Yunnan. 1950 is therefore a crucial point in the history of Tibet. The Chinese invasion ended a long period of heated disputes concerning territorial sovereignty , which developed prior the thirteenth century and at the same time was the point of origin of the present-day demands of the Tibetan community , primarily concerned with human rights and the principle of self-determination of peoples.

The Tibet issue is an issue of considerable controversy ; the thesis that contrast mainly involve the political, historical, legal , and determine a fracture not healed yet between the Tibetan and Chinese communities . His Holiness the XIV Dalai Lama Tenzin Gyatso , who was awarded the Nobel Prize for Peace December 10, 1989 , the head of state and spiritual leader of the Tibetan Government in exile, now officially abandoned the claim of independence requires genuine political autonomy to local ' internal sovereignty of China similar to the formula "one nation , two systems" that Beijing is implementing in Hong Kong.

Wen Jiabao, the Chinese premier , at the end of the National People's Congress in 2007 stated that "as long as the Dalai Lama That Recognizes Tibet and Taiwan are inseparable parts of Chinese territory and abandons splittist activities then the door is always open ."

The public has once again examined the human rights violations and fundamental freedoms in the context of Sino - Tibetan , due to recent and significant events.

The " Audencia Nacional " , the highest instance of Spanish penal , declared itself competent to receive the complaint for " genocide , crimes against

humanity , torture and terrorism against the people of Tibet " , filed by the NGO " support committee Tibet " , against seven Chinese leaders , including former President Jiang Zemin and Li peng , former prime minister . On 10 January 2006 the Spanish courts have questioned the inaction on the part of the Chinese justice system and the inability to bring the case before the Court itself, by China , emphasizing how different events that have taken place in a systematic manner in Tibet and in connection with the Tibetan people , present " prima facie " the characteristics set out in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

30 settembrate 2006 Western tourists resumed and spread a movie , in which the Chinese border police opened fire on Tibetan refugees forty , killing two , as they crossed the step " Nangpa -La " on the border with Nepal .

The objective of this research is to collect pursues the thesis and claims of the Tibetan government in exile and the People's Republic of China, comparing them with the rules of international law , whether treaty law and customary law.

It was considered useful to introduce the issue through a historical summary introduction in order to contextualize the claims of both parties and to analyze the ways in which the international community, in particular the ion A European Union and the United Nations , addressed the matter.

1. HISTORIC INTRODUCTION

The historical analysis that we are going to pursue has not the purpose of treating fully the complex and ancient history of the Tibetan state nor the Chinese state ; In fact, will be highlighted only the most significant and most far-reaching consequences events concerning international law, which will be subject to further analysis .

Following this perspective, we will give particular attention to the events of the twentieth century , culminating with the invasion of the Liberation Army of China in the region of Kham in 1950 ; Nevertheless, we briefly mention the historical events preceding that helped to fuel the demands of Chinese and Tibetan communities .

1.1 REPORTS PRIOR TO THE TWENTIETH CENTURY

Towards the end of the twelfth century Genghis Khan united the various Mongol tribes , and began an intensive campaign of military conquest in 1207 subjugating Tibet , who regularly undertook to pay tributes to the great Khan.

It is important to note that at the time of the Sakya sect of Tibetan lamas and emperors intercorreva a type of relationship that the Tibetans call " priest - patron " (yon bdag) term is difficult to translate into Western culture and that could be erroneously considered a mere vassalage . In practice, the Lama became the spiritual leaders of the rulers , celebrating rites and divinations ; in return, as an act of respect and gratitude , the Mongol emperors promoted and protected the interests of the investing of the office of priest and regent ruling Tibet through his authority. This presupposed a mutual recognition and legitimacy.

With this view contemporary Chinese officials say the incorporation of the Tibetan state within the Chinese Empire ; vice versa the Tibetan government in exile claims that its people have been subjugated by the Mongol just as much as the Chinese people. The proof of this last argument dwell with the end of the Mongol Yuan Dynasty in 1368 by the Chinese Ming Dynasty , who established a new empire claiming the independence of China.

In 1720 the Manchu Qing dynasty was able to take control of Tibet, defeating the zungari who occupied the territory and placing the seventh dalai lama under its protection by installing it in the Potala Palace in Lhasa , the historic home of the Buddhist leadership . From 1720 the Qing Dynasty made several administrative changes : formed military garrisons of thousands of soldiers in the capital , created a collective formed by four government ministers, and placed two imperial commissioners called " Amban " in Lhasa with the role of supervisors, in particular for what concerned the research and the formalization of the reincarnations of the most high lamas , including the dalai Lama .

Since the beginning of the nineteenth century saw a sharp reversal of

direction with regard to the influence Manchu in Tibet, with drastic reduction of the power of " Amban ", return of the traditional mode of choice of reincarnations and political power in hands of the Dalai Lama until the early twentieth century, a period in which the ascending of the Qing is considered more symbolic than real.

1.2 RELATIONS IN THE TWENTIETH CENTURY

In 1904 a new actor was inserted in the Sino- Tibetan : the United Kingdom.

The British state hoped to develop , through its Indian colony , a rich trade with Tibet. The negotiations , however, were opposed by the thirteenth Dalai Lama , who rejected any involvement , so as to cause the occupation of Lhasa by British troops. In this way, local officials were forced to sign the agreement that formalizes the Anglo -Tibetan extensive trade privileges granted to the United Kingdom, accepted the British protectorate over Sikkim and provided for the clause which prevented any foreign power to influence the internal politics of Tibet.

With the British invasion of 1903, China 's foreign policy changed dramatically : he became aware that , if he had not acted quickly , the influence on the conquered Tibet would be lost . This event spurred the Chinese government to protect its national interests , giving way to a more strict political, economical and cultural program.

In 1906 the Qing Dynasty, although weakened, stipulated with the United Kingdom, the Convention of Peking , whereby the British state recognized the subordination of Tibet to China.

In this way, paying a huge indemnity , Beijing was able to obtain the departure of British troops from the soil of Tibet. Subsequently, the Chinese government , not believing in the faithfulness of the dalai lama , sent a large military contingent in Sichuan Province ; in response , the Buddhist spiritual leader invoked the help of the British and at the same time sent to the Qing emperor an ultimatum which asked to recall the troops under the threat of a decisive British military intervention .

The UK , however, did not intervene at all , letting the Chinese army be the rage in Lhasa, and assisting to the Dalai Lama's exile in India , and an expansion of the effective control of the Chinese officials .

Tibet seemed attached and integrated into the Chinese state , when ,in October 10, 1911 , some Chinese soldiers murdered their commander , taking control of the city of Wuchang in western China and beginning the

revolution that led to the abdication of the emperor Manchu Puyi and that overthrew the Qing Dynasty .

The Dalai Lama , in exile in India , aware of the opportunity arising from the confusion that reigned in the territory of China because of the revolution , organized a military force , made up mostly of Tibetan resistance , in order to regain control over Tibet and thanks to mediation of Nepal, he managed to alienate Chinese officials and soldiers present in Tibetan territory returning triumphantly into the capital in 1913.

The return of dalai lama was followed by a telegram sent by President Yuan Shikai of the new provisional government of China , which officially returned to the Dalai Lama the title of vice- regent of Tibet , hoping that he could become a valuable aid to the republic. His Holiness answered that he had never requested such a reconfirmation of the title and that he exercised both spiritual and temporal power over Tibet. Twenty-two days later, on February 4, 1913 , His Holiness the dalai lama spoke his own declaration of independence. In order to make practical independence was established an office of foreign relations in Lhasa, issued stamps and minted national currency, the "sang " also in 1913 , the Mongolian - Tibetan plenipotentiaries signed a mutual recognition agreement .

The nations could not remain impassive towards independence "de facto" of Tibet and the United Kingdom , which had the objective to create a buffer state between China and India , organized a conference which was attended , as equals , representatives Tibetan , Chinese and British : the Simla conference of 1913.

The negotiations lasted for several months and a draft treaty was approved by the three only around July 1914, Tibet was granted full autonomy about domestic politics and China saw recognition of its sovereignty and the right to send a representative in Lhasa. The greatest disagreement occurred instead on the determination of border demarcation , which led the Chinese plenipotentiary to reject the treaty.

The UK could not nullify the profusion of so many efforts and in doing so gave the British delegate , Sir Henry McMahon authorization to sign a bilateral note with Tibet , which established the obligation for both parties

to comply with the conditions of the Simla Convention not ratified ; in particular the sale by Tibet to the United Kingdom of an area in the east of Bhutan today's Indian province of ' Arunachal Pradesh.

Ambiguously , the British government do not officially recognized the independence of Tibet , but he recognized the right to sell a vast territory without consulting China.

From 1913 until the death of the thirteenth Dalai Lama , in 1933 , the Tibetan government did not accept interference in China, trying with all means at its disposal to recognize its independence " de facto" and not conceding to any chinese officer or soldier to reside in Tibet. Following the Japanese invasion of China in 1937 turned the attention of Chiang Kai-shek from the Tibetan issue ; the head of the Nationalist government , while not abandoning their territorial claims , facing a more grave and imminent danger , did not has the chance to realize them .

On October 1, 1949 was proclaimed the People's Republic of China and the seventh Panchen Lama , the second highest spiritual leader in Tibetan Buddhism , whose formalization was achieved by the communist government of Nanjing not according to religious tradition , celebrated the success of Mao Tse Tung inviting the People's Liberation army to overthrow the representatives of the reaction identified in the Chinese Nationalist government that occupied Tibet , thereby giving evidence to support fully the communist regime and at the same time moving away from the policy of the Tibetan government . Radio Beijing in January 1950 stated that the invitation had been received and that the communist revolutionary army would liberate the Tibetan territory .

On October 7, 1950 soldiers of the Chinese People's Army crossed the frontier of the Yangtse River and put in check the backlog Tibetan army . However, the Chinese army is not advanced further , thus giving the opportunity to deal with Lhasa . This strategy was consistent with the intention of Mao Tse Tung to conquer the Tibet through a political agreement approved by the Dalai Lama. The Tibetan government then sought help from the international community , speaking at the United Nations condemning " the violence done to the weak from the strong ." The appeal was thwarted by the support of the USSR Communist China ; also

the issue of Tibet passed on the second floor in front of interests surrounding the Korean War.

The government of Lhasa, politically isolated and besieged by the Chinese army , had no other way but the deal : in the spring of 1951 sent a delegation to Beijing , which signed 's "Agreement in seventeen points for the Peaceful Liberation of Tibet" which legitimized officially the territorial claim of the Republic of China , while allowing the dalai Lama to keep in the near future a kind of feudal and theocratic government .

The strategy of Mao Tse Tung was defined "gradual" as he tried to establish a friendly relationship as much as possible with the Tibetans in order to complete the restoration within the territory of China in a natural way , and then pursue the establishment of a socialist direction , without hurry premature changes .

Half of the fifties the policy of "small steps" began to falter, the Chinese Nationalists claimed their right to impose robust reform on the feudal government of Lhasa ; on the contrary, Tibetan nationalists were in the process of organizing an armed uprising .

The condition worsened after the "great leap forward " in 1958 : many priests and nobles were denounced for conspiracy , and began the "campaign of the four liquidations " revolt against the resistance , the political opposition , the privileged , the exploiters . The monasteries were turned into barracks and many priests had to recant or were forced to become part of the Chinese army .

Social tensions resulted in the great uprising of 10 March 1959 when Dalai Lama fled to India, and founded the " Tibetan government in exile" and denied the " agreement in seventeen points", seeking support for the independence and the right to ' self-determination of its own people .

The State Council of the Republic of China responded by dissolving the local Tibetan government , commanding the army of liberation to suppress the popular uprising and condemning the Dalai Lama as a traitor of the state.

The political and religious persecutions suffered from Tibet along with

poverty and lack of food forced thousands of people to flee. The exiles assisted by the Red Cross in 1961 were 40,000 in India and 15,000 in Nepal.

The Tibet issue came up again dramatically.

On October 21 , 1959, by its resolution 1353 (XIV) of the General Assembly of the United Nations , there was a first positive result for the government in exile, in spite of the opposition of the compact communist bloc , by virtue of Article 2 (7) of the Charter of the United Nations concerning the non-interference in the internal affairs of states , said the exploitation of the Tibetan issue by the states to the detriment of the Western bloc countries. The United Nations declared it much worry and stress the need to safeguard the rights of Tibetans and peace put in danger by the policies of the PRC .

In 1961, during the Cold War , especially from the United States , was provided increased support for the Tibetan cause , which led to resolution 1723 (XIV) of the General Assembly . This resolution was concerned, in particular the principle of self-determination of peoples. In 1965 the General Assembly met again to discuss the issue of Tibet , with 43 votes in favor versus 26 against adopted resolution 2079 (XX) , saying he was gravely concerned about the continuing human rights violations against the Tibetan people.

The Tibet issue not only aroused the concern of the United Nations , in fact since 1987 the European Parliament adopted a number of resolutions relating to fundamental freedoms in Tibet Autonomous Region , helping to identify the Sino-Tibetan issue as an unresolved problem that requires the attention of the international community.

II.QUESTION ACCORDING TO INTERNATIONAL LAW

2.1 PRINCIPLE OF SOVEREIGNTY

Under international law a State is that when it has a population permanently allocated , a defined territory, a government able to perform his duties on the given territory and people, the ability and willingness to establish relations with other states. On 16 December 19991 the foreign ministers of the member states of the European community defined guidelines so that a state could be part of the organization, including compliance with the provisions of the UN Charter and the Helsinki Final Act . This event seemed to foreshadow an evolution of international law in the recognition of sovereignty, implicitly asserting legal criteria to which a sovereign state should fulfill.

Despite these criteria, the birth of a sovereign state to be detected by the principle of effectiveness by the international community , since the practice of recognition by other states is purely discretionary act and valence merely political .

Approval may be explicit or implicit , if they are placed in conduct such that it can be inferred , for example, through the conclusion of treaties . Historically some legal theories have been formulated as regards the recognition of governments.

The first theory , known as the "effective control " states that the characteristics necessary to ensure that a government is considered to have the ability to exercise sovereign control over territory that aspires to govern and the ability to fulfill its international obligations . The second theory , known as the " doctrine Estrada " promulgated for the first time from Mexico in 1931 , does not admit the possibility of recognizing the sovereignty of foreign governments because of the interference that such a decision would result in the internal affairs of a state. Finally, the " Tobar approach " , named after its inventor, argues that the recognition of a government should be subject to democratic legitimacy through a free and fair electoral process.

When a state is recognized as sovereign and independent it is assumed that the quality will endure over time. The state claims sovereignty rights of

another state must provide convincing evidence in order to endorse this claim , such as a consensual agreement or the effective exercise of authority for an extended period of time. Interventions such as the illegal occupation and military aggression do not cause the extinction of the state occupied , since the principle of sovereignty prevails over the principle of effectiveness.

The Tibetan government -in-exile says that since the eighth century could claim sovereignty over its own territory , in fact, in 821 AD Through its ministers China and Tibet signed a treaty by which we can deduce the statement of the territorial sovereignty of Tibet and also the recognition of the territorial inviolability . This agreement is one of the evidence that , regardless of the interference and the temporary failures of effective government that occurred in the course of its thousand-year history , Tibet was fully independent of the army at the time of the invasion of China in 1950 , resulting in the ' wrongfulness of the Chinese occupation .

The Tibetan government in exile says that Tibet had the typical characteristics of statehood , including its own people (the Tibetan ethnic group different from the Chinese called " han") ; its own territory (the historical Tibet) ; its own government (which controlled the army, the postal and telegraph services , the system of taxation and money , and also issued through the Office of Foreign Affairs , passports are recognized as valid travel documents by states such as France, India, Italy , United Kingdom); the full capacity to establish relations with other states as confirmed by the treaties with China, India, Mongolia , Nepal, the United Kingdom during the Simla Conference of 1914.

Diametrically opposed , the thesis of China states that Tibet has always been part of China and invokes the principle of territorial integrity , in order to invalidate the claims considered Tibetan separatist , and the peace agreement in seventeen points treated as consensual .

2.2 PRINCIPLE OF SELF-DETERMINATION AND TERRITORIAL INTEGRITY

The principle of self-determination is generally considered the right of a people to determine their own cultural, economical, political destiny; This law is characterized by the quality of non-retroactivity , permanence, universality.

This principle does not apply to the European territories conquered by force before the Second World War ; the principle is permanent because it is not consumed after being exercised; the character of universality states that the principle of all peoples and not just the one under colonial rule .

Article 1 of the Charter of the United Nations confirms that one of the highest goals of the organization is to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples.

In 1960 it was adopted by the UN General Assembly without any vote against, the Declaration on the guarantee of independence to colonial countries and peoples, which acknowledges that the subjection of peoples to foreign governments as contrary to the principles of the Charter of the United Nations. In 1970, " was later adopted by the General Assembly of the United Nations Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states, which states the requirement for each state to promote, either unilaterally or in cooperation with other states, the realization of the principle of self-determination of peoples.

Since 1971, the International Court of Justice recognized the legal status of the principle of self-determination of peoples , in fact it is the decision on the legal consequences for states of the continued presence of South Africa in Namibia despite the resolution 276 (1970) of the Security Council , and the Decision on Western Sahara in October 1975 allow you to see that the principle of self-determination is a fundamental human right , a prerequisite in order to enjoy the other rights and freedoms . In addition, much of the doctrine considers it imperative belonging to the law , can not

be waived , because the International Court of Justice , in answer to the case in East Timor in 1995 he has held the nature of the law establishing obligations " erga omnes " .

This acceptance does not imply that the principle of self-determination should be applied in an absolute and dogmatic way regardless of the particular situation, in fact it may conflict with other principles , as commonly accepted, such as the principle of territorial integrity. In order not to authorize or encourage any action that would divide all or part of the political unity or territorial integrity of a sovereign state, in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states the General Assembly admits the superiority of principle of territorial integrity of states that conform their policies to the principle of equal rights and self-determination and possessing a government representing the whole people without distinction of race , creed or color.

While there is disagreement among lawyers regarding the circumstances in which the right to self-determination can be exercised , there is nevertheless agree that if a people , constituting a given state , are denied equal rights and implemented forms of discrimination law of self-determination can be exercised fully .

The legitimacy and reasonableness of claiming self-determination , where the crowd should be related to other principles of international law , is based also on how cohesive the particular people and the intensity of non-recognition that it has for the group dominant ethnic . It ' also important to consider whether the implementation of this principle may result in adverse effects on the stability of the region , or whether it can resolve major tensions , for example by promoting the return of refugees or improving the economic conditions of the population. However, you will have to assess the extent to which such a claim may contribute to the consolidation of human rights and human dignity.

In 1970 the United Nations General Assembly resolution 2625 (XXV) , said that the people who react and resist a measure of restraint in the exercise of their right to self-determination , have the right to seek and receive support in accordance with the purposes and principles of the Charter of the

United Nations.

In this regard, although there is no real definition of people in international law, a UNESCO report published in November 1989 states that a people to be defined as such under international law must have certain characteristics: form a group of human beings which share common characteristics such as a history or tradition , racial or ethnic identity , cultural homogeneity , linguistic unity , religious or ideological affinity , territorial connection , common economic life ; be formed by a number of components greater than a mere association of individuals within the state ; be conscious of their own identity and have a willingness to identify with a people ; have , possibly , institutions that allow it to express their common characteristics and identity .

The Tibetan government in exile says that the Tibetans are an ethnic group distinct from the others, and always consider themselves a different people than the neighboring ethnic groups , characterized by its own language , culture, religion and heritage ; Peoples Republic of China is not the same ethnic group assimilates them "han " China's own . The ancient and complex history of Tibet , the strenuous resistance to the Chinese invasion , consisting of popular uprisings , demonstrating non- identification of the Tibetan people compared to the dominant Chinese. The Chinese government is in fact from the Tibetan community accused of having committed acts of genocide and strong discrimination , that determines the legality of the claim sovereignty and it follows the illegality of invoking the principle of territorial integrity is also at full capacity by the people Tibetan self-determination.

The Republic of China states simply that Tibet is historically always belonged to China and by virtue of the principle of territorial integrity deemed unfounded claims separatist and secessionist of the Tibetan government in exile.

2.3 HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The Institut de droit international has affirmed its resolution in 1898 that "the rights of man are the direct expression of the dignity of the human person . The obligation of states to ensure compliance derives from the same recognition of this dignity as proclaimed by the United Nations Charter and the Universal Declaration of Human Rights, the international obligation is an obligation erga omnes ; it applies to every state towards the international community as a whole, and each state has a legal interest in the protection of human rights.

Human rights in the collection consist of freedom , immunities and benefits that , according to the dominant values , every human being should require in the society in which they live , the quality of oneness and indivisibility emphasizes the interdependent nature . Despite being designed for individual human rights pose a downsizing of state sovereignty that creates obligations between the states , which can not avoid placing himself in front of a thorough analysis by the international community.

Massive violations of human rights of minorities may be regarded as threats to peace and security for the purposes of Chapter VII of the Charter of the United Nations , at the discretion of the Security Council , even if such violations have no consequences beyond the borders of the state.

On 16 December 1966 were adopted in New York the United Nations Covenants (the Covenant on Civil and Political Rights and the Covenant on Economic and Social Rights) .

The high number of states parties that foreshadows the rights enshrined in these agreements are started to become customary , especially with regard to the founding core including fees that can not be suspended even in the event of a public emergency such as the right to life, prohibition of torture or cruel and degrading treatment , the prohibition of slavery , the right to freedom of thought, conscience and religion.

The violation of human rights is a condition that allows people to exercise their right to self-determination . The Tibetan government in exile says that since 1950 , the year of the invasion of Tibet, the People's Republic of

China has made a series of offenses , such as the abolition of religion , the transfer of population compulsively , the prohibition to reproduce, discriminated in the workplace and in the allocation of houses, damaged the environment , prohibited the freedom of expression and carried out torture and summary executions . These acts have been made in order to deprive the Tibetan people of their identity politics and to break the bonds that joined him during the course of history .

Ethnic and cultural genocide.

Religious freedom is protected under international law , Article 18 of the Universal Declaration of Human Rights , Article 18 of the International Covenant on Civil and Political Rights and the Convention on the Prevention and Punishment of the Crime of Genocide .

In 1960 the International Commission of Jurists stated that acts of genocide were committed in order to destroy the Tibetans at the level of a religious group . The Committee noted that the Chinese government did not allow the practice of Buddhism in Tibet , he tried to systematically eradicate religious beliefs ; killed numerous members of the Buddhist religion .

Since 1976 the Peoples Republic of China was controlled by means of political and institutional means , the practice of Tibetan Buddhism , declaring that he would teach this practice in order to reform the teachings that did not accord with the socialist society.

Article 36 of the basic rights and duties of citizens of the Chinese constitution says "religious bodies and religious affairs are not subject to any foreign domination ."

On the basis of this provision, the Chinese government has interfered with the practice of recognizing reincarnations of the most high-ranking Buddhist religious , controlling the decision-making process through the establishment of criteria and the final veto power . On 5 August 19996 the People's Republic of China announced a re-education campaign ,

monasteries, in order to counter the nationalist sentiments . In particular, the monks were asked to sign an oath of alliance politics and those who refused were expelled or arrested.

In accordance with Article 49 of the Chinese Constitution the number of members of the household is limited by a quota system variable in relation mainly to the region and to membership of a particular job category : usually to civil servants and urban areas is granted have two children, while peasants and nomads are granted three children.

In the areas most populous apply the "one child program" .

Children born outside of the predetermined amount can not be registered , so they do not have the right to be educated and receive sustenance. In 1998, the authorities have reduced the limit allowed for children nomads and farmers from three to two : despite population growth in Tibet is extremely low and well below the level planned for the region this change has involved 85% of the Tibetan people .

Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 states the right to decide freely and responsibly on the number of their children and to have access to the necessary information in order to exercise that right.

In addition, the Convention on Genocide states that imposing measures intended to prevent births of a group whether national , ethnic, racial or religious group is configured as genocide if such measures are imposed in order to destroy all or part of that group.

Prohibition of transfer of population and discrimination.

The large-scale transfers of Chinese in Tibet violates human rights laws , including treaties ratified by the Republic of China. In particular , Article 49 of the Fourth Geneva Convention prohibits the occupying power to deport or transfer parts of its own civilian population in the occupied

territory ; Article 47 extends the effects of prohibition even if the status of the territory in question changes . In addition, Article 27della Convention on the Elimination of All Forms of Racial Discrimination of 1965 prohibits states from banning ethnic minorities , religious or linguistic minorities the right to enjoy their own culture , religion or language , while Article 5 prohibits discrimination in the workplace.

Article 14 (2) (h) of the Convention on the Elimination of All Forms of Discrimination against Women , and Article 27 of the Convention on the Rights of the Child of 1989 require states to ensure the rights of women and children to have adequate housing, and Article 53 of the Fourth Geneva Convention prohibits the destruction of personal property belonging to members of the occupied people , if not absolutely necessary for military purposes. In the four decades of Chinese occupation , the government of China has expropriated and haunted houses with large-scale demolitions of urban and rural settlements , replacing them with structures that conform to the Chinese architectural style . During the Cultural Revolution were destroyed about six thousand monasteries in Tibet , whose reconstruction requires the permission of the central government.

Prohibition of arbitrary detention , torture , slavery.

The United Nations Working Group on Disappearances stated that states are obliged to adopt appropriate legislative, administrative , judicial, such as to prevent and terminate acts of enforced disappearance. With regard to Gendun Choekyi Nyima 's disappearance , the eleventh Panchen Lama , only eight years old , dating back to May 1995, the UN Committee on the Rights of the Child called for China to be able to send a representative in order to visit family and to clarify incident.

Dhamchoe Gyatso , Jingme tendar , Dhamchoe Kalden school " Nga - rigkye - tsel -ling " at the Kumbum monastery in Amdo region , were accused of publishing a literary magazine called counterrevolutionary and prohibited, disappearing after the arrest in March 1996.

Article 19 of the Universal Declaration of Human Rights guarantees freedom of opinion and expression as a fundamental human right , Article 20 guarantees freedom of peaceful assembly ; Covenant on Civil and Political Rights states in Article 7: " No One Shall be subject to torture or to cruel , inhuman or degrading treatment or punishment" in Article 8: "(1) No One Shall be held in slavery ; (2) no One Shall be held in servitude , and (3) no one Shall be required to perform forced or compulsory labor " in Article 9:" no One Shall be Subjected to arbitrary arrest or detention " , in Article 10: "all persons deprived of Their liberty Shall be treated with humanity and respect for the inherent dignity of the human person" . Article 35 of the Chinese constitution guarantees freedom of speech , publication, assembly and demonstrations . Hundreds of Tibetans have been arrested for exercising their right of expression and opinion , demonstrating in favor of the rights of self-determination or his holiness the dalai lama . In October 1994 , the UN Working Group on Arbitrary Detention ruled that in contravention of Articles 19 and 20 of the Universal Declaration of Human Rights the Republic of China did not respect freedom of opinion and expression , arresting thirty-nine Tibetans.

Article 1 of the Convention against Torture and cruel, inhuman and degrading treatment prohibits any kind of torture . In 1990, the UN Committee against Torture notified that you have received credible documents in which they denounced persistent practices of torture in Tibet. The criminal law of the Republic of China prohibits only certain torture , and the UN Committee calls for the establishment of an independent judiciary and the elimination of all forms of torture Ordinamento legislation.

You can also trust the hypothesis that China has undergone part of the Tibetan population in forms of slavery. In 1988, they were in fact established programs of work unpaid in Tibet in order to build roads and hydroelectric plants.

There are 1155 farm prisons in China.

The Tibetans are assigned primarily to two types of prisons farm " reform through labor " or " Laogai " , a form of detention to which they are assigned the majority of those who are judged by a court ; and " re-

education through labor " or " laojiao " , a system of administrative detention that does not require the judgment of the court, headed by the civilian authorities and the police. On October 1, 1996 came into force the law of administrative punishment that included the right to defense and public hearing hitherto denied , while still the right to a lawyer does not exist. The Law of Administrative Procedure of October 1, 1990 provides for a limitation on the revision of the judgments of administrative detention, in fact, the involvement of the court is expected only in the second appeal. According to the rules of the system of re-education through labor is applied to counter-revolutionary elements and anti-party or anti-socialist elements whose acts do not have a sufficient severity to be prosecuted for criminal responsibility .

Article 8, paragraph 3 (a) of the Convention on Civil and Political Rights prohibits slavery in all its forms. Although paragraph 3 (b) of that article states : "paragraph 3 (a) Shall not be held to preclude , in countries where imprisonment with hard labor may be Imposed as a punishment for a crime , the performance of hard labor in pursuance of a sentence longer available to punishment by a competent court " , it does not exclude the offense given the nature of the administrative penalty and the non-involvement of a competent court .

2.4 THE PEACE AGREEMENT IN SEVENTEEN POINTS

International agreements are based on the universally recognized principle that identifies the legal basis of the obligation in the mortgage and free consent of the contracting parties . This freedom of consent is an essential element of the agreement ; consequently an agreement imposed by coercion is invalid. Article 51 of the Vienna Convention of 1969 on the Law of Treaties states: " the expression of the consent of a State to be bound by a treaty has been obtained through violence exerted by its representative through acts or threats directed against him, is devoid of any legal effect. Article 52 establishes the invalidity of any treaty whose conclusion has been procured by the threat or use of force .

A state may invoke the invalidity or absolute agreement. The invalidity may be declared on the contractor when the state has fallen into error , he suffered a fraud or its representatives have been corrupted or have acted " ultra vires " ; that disability is curable by explicit agreement or acquiescence. Unlike the full invalidity is when the state or its representatives have been forced to conclude the agreement by the use of force. The imposition , in a state of concluding a treaty when the armed forces of another state are or are about to take , or threaten to invade the territory in violation of international law is " ipso facto " derived from the use of force or threat of force , and consequently without any legal effect.

The conditions under which the Tibetans have signed the peace agreement are to be considered coercive . Preceding the opening of negotiations , on 29 April 1951, the Chinese army occupied the capital of the region of Chamdo killing the soldiers of the Tibetan ; also during the meeting of the representatives of the Contracting Parties in Beijing most regions of Kham and Amdo were occupied by the Chinese army . In the same period the Chinese authorities proclaimed its intention to acquire control of the entire Tibet , if necessary by force . Members of the Tibetan delegation claimed that the Chinese delegates threatened to move the army to Lhasa if the terms of the agreement were not accepted ; In addition , the delegates themselves were not plenipotentiaries and could not compel their state through their own free initiative , as confirmed by the absence of official seals in the signing of the agreement, which according to the thesis of the

Tibetan government in exile would have been counterfeit .

2.5 NON-TERRITORIAL ENTITIES : THE TIBETAN GOVERNMENT IN EXILE

The government -in-exile is an entity which, while not exercising a power of dominion over a territory aspires to become a government organization of a territorial community ; this can occur due to the occupation of a state during a war which does not extinguish legal personality. In the light of the principle of self-determination of the peoples of the government in exile, represents the people to gain the respect of this right.

The first example occurred during the First World War, when governments were occupied as the Belgian , Serbian , Montenegrin continued to exist on foreign soil .

During the Second World War, the phenomenon recurred , in fact many territories fell under the German occupation and the governments which olandase , Norwegian, Yugoslav and greek continued to administer their own business in London .

After arriving in India, His Holiness Dalai Lama established the Tibetan government in exile , consisting of a toilet, " Kashag " , consisting of six ministers : internal affairs , foreign affairs, religion and culture, education, finance, security . An office was established in New Delhi with the task of mediation with the Indian Government , foreign diplomatic missions and international agency . Other locations , who acted as unofficial embassies , were later established in New York, Geneva , Tokyo , London, Paris , Moscow.

In 1960, the Dalai Lama called the first democratic election in order to establish a representative body to act as a parliament in exile : the Committee of People's Deputies . In 1963 the constitution was promulgated tibet , text that combined the Buddhist principles with popular democracy . In this paper we put forward a system of government not unlike a constitutional monarchy , in which executive power was entrusted to the head of state, the Dalai Lama , and the " Kashag " ; legislative power democratically elected assembly ; the judiciary to an independent supreme court . In June 2001, more than 100,000 Tibetans in exile went to the polls

to elect the prime minister Samdhong Rinpoche.

The Tibetan government in exile actually administers the affairs of the refugees. It also , though not officially recognized , enjoys a special status in India ; New Delhi refers all that concerns the refugee Tibetans in Dharamsala and implements consultations on this matter with the government in exile.

III THE QUESTION AFTER THE EUROPEAN UNION AND THE UNITED NATIONS

3.1 ACTS OF THE UNITED NATIONS

In 1971 the General Assembly of the United Nations in its Resolution 2758 (XXIV) decided to recognize the government of the PRC legitimate representative at the UN , giving it full rights, including the right of veto in the Security Council , and disregarding the government nationalist Chiang Kai- Shek which until then had held a permanent seat in the Security Council.

In accordance with articles 10,11,12 of the United Nations Charter , the General Assembly , composed of all member states , may discuss any matter pertaining to the aims of the paper, including the maintenance of peace and international security , adopting recommendations made members of the United Nations if the security Council is not engaged to examine the same issue. Article 14 of the United Nations Charter states : "Subject to the provisions of article 12 , the general assembly may recommend the Measures for the peaceful adjustment of any situation , regardless of origin , it Deems Which Likely to impair the general welfare or friendly relations Among Nations , including situations Resulting from a violation of the provisions of the present charter settin forth the purposes and principles of the united nations . "

Although not legally binding , the recommendations of the General Assembly focused on many issues have become part of international law , such as the colonial disputes and violations of human rights. During the Cold War , in order to avoid the veto power of the states permanent members of the Security Council would affect the ability of the UN to be able to implement the necessary measures , in 1950 the General Assembly adopted resolution 377 (V). The latter stated that at the request of at least seven members of the Security Council or of a majority of the members of the assembly, this would be reunited , even in extraordinary session within twenty-four hours, to address to the members of the United Nations and its bodies recommendations more appropriate for taking all necessary measures - including the use of force to maintain or restore conditions of peace or international security. In this perspective, in 1956 the General Assembly established the United Nations emergency force in order to view the cease-fire during the Suez crisis ; this force was also used during the

Hungarian crisis of 1956, the conflict between Jordan and Lebanon in 1958 and in the Palestinian issue between 1980 and 1982 .

The Federation of Malaysia and the Republic of Ireland promoted the inclusion of the issue of Tibet in the fourteenth session of the United Nations , October 21, 1959 and was adopted by the General Assembly resolution 1353 (XIV) with a majority of forty-five votes in favor, against the nine votes of the communist bloc . This resolution did not mention specifically the People's Republic of China, nor the invasion and occupation perpetrated , but noted the distinct cultural and religious heritage of the Tibetans and the autonomy that traditionally were the beneficiaries, and affirmed the denial of major concern for the rights and freedoms human and the growing international tension that resulted in denial .

On 10 April 1961, the federation of Malaysia, Thailand and Ireland presented to the General Assembly a draft resolution , with which noted despite the resolution adopted previously , the continued violation of human rights and fundamental freedoms in Tibet, such events as to produce a exodus of refugees on a large scale capable of increasing international tension and tighten the relations between states. The sponsors of the resolution stated that the situation in Tibet had worsened due to the continued repression , about forty-five thousand Tibetans who had sought refuge in India, Nepal , Sikkim and Bhutan. The refugees claimed to have been victims of forced labor , deportations , and to have witnessed the suppression of religious institutions. Albania , Bulgaria and the Soviet Union were opposed to the hypothesis of discussion pursuant to Article 2 (7) of the paper of the United Nations , stating that Tibet was always an integral part of Chinese territory and noting the great progress made by the liquidation of the reactionary forces in 1959 , an event that restored democratic freedoms , economic development and literacy severely compromised by pre-existing feudal system . On 20 December 1961, the General Assembly adopted resolution 1723 (XVI) saying he was concerned about continuing human rights violations and suppression of cultural and religious , stating also the Tibetan people are able to exercise their right to self-determination , of which up to then had been private .

In 1965 the General Assembly of the United Nations adopted resolution 2079 (XX) , in which he expressed concern at the violations of the rights

and freedoms of the Tibetan people , the draft resolution ended with an appeal to member states to consider any measure (" Take all measures ") , that appeal was modified with a request to look into the best way to achieve the aims of the resolution (" to use best endeavors to Achieve Their the purposes of the present resolution ") .

Despite these resolutions, no concrete and effective step has never been attempted by the United Nations , nor the issue has never been addressed within the Security Council in which the Republic of China enjoys as a permanent member with veto power .

3.2 ACTS OF THE EUROPEAN UNION

Respect for human rights is one of the basic conditions for joining the European Union ; such an organization poses as a condition for the conclusion of agreements with third states respect human rights , recognizing that the commercial activities , although important, can not prevail on the values of freedom and justice. The European Parliament has the ability to make non-binding resolutions , and starting in the Single Act of 1987 (Art.310 238 cc) to refuse his assent to the treaties of association between the union and the third states and to other agreements International having budgetary implications . Following this perspective, the European Parliament has consistently called for such agreements call for a right to respect for human rights whose violation may result in termination of this Agreement by the same principle of 'conditionality' .

The European Parliament has shown great concern about the Sino-Tibetan issue , adopting several resolutions since 1987 . In its resolutions of 14 October 1987 , March 15, 1989 , June 24, 1993 September 16, 1993 , 18aprile 1996 May 23, 1996 , March 14, 1997 , May 13, 1998 , the parliament has detected worrying violations of human rights of the Tibetan people carried out by the People's Republic of China such as arbitrary arrests for ideological reasons and prohibition of religious freedom ; in the resolutions on 13 July 1995 and 14 September 1995, he condemned the detention and disappearance of a child of six years , Gendhun Choekyi Nyimadel , recognized by His Holiness Dalai Lama as the reincarnation of the previous Panchen Lama legitimate , and the arrangements adopted by the Chinese government for arbitrary select this religious office .

In its resolution of 13 July 1995, the parlamentano affirmed the illegality of the invasion carried out by China in 1950 and declared the territory occupied Tibet ; while in the resolution of 14 December 2005 calling on member states to maintain the embargo against China on arms and not to alter the existing restrictions in relation to their sale .

In 1991, work began on the " Panam integrated rural development project", a cooperation project between the European Union and China, which originally provided for the exchange of technical assistance in order to

improve irrigation in the area to the south of Lhasa, but subsequently was expanded in order to improve education , hygiene conditions and alleviate poverty . The resolution of 14 December 19995 submitted the final decision regarding the continuation of the project Panam acceptance by the People's Republic of China of requests

in the resolutions previously adopted on the Tibetan issue .

IV CONCLUSIONS

The Tibetan issue until analyzed so far highlights the deep problems and paradoxical contradictions existing in the world society . Hardly, in fact, a democratic government may refrain from reporting and groped to limit serious affronts to publicly held inviolable values , such as human rights or the most elementary sense of legality , understood in its widest sense , respect for what the diplomatic practice Legal and identifies as legitimate. Hardly a democratic government could explain to their citizens basic human values , enshrined in any democratic constitution , founding the company said that the government has the obligation to protect , enhance and represent political tricks are more ideal than real, which can be guaranteed if there is value in doing so , but there is no reason to give up if that choice turns out to be , materially , the most profitable .

In line with such conviction , the European Union through its parliament , said she was worried and angered by the continuing violations of human perpetrated by the Chinese state .

Even the reaction of the organization of the united nations was swift , sanctioning , by the General Assembly , its regret for what the Tibetan people was undergoing , and asking that the principle of self-determination for the Tibetan Autonomous Region .

Despite such public demonstrations of interest and Security Council of the United Nations proves to be a democratic body at all , tying their decisions to the veto power of its permanent members which shall include the People's Republic of China , a fact that underlines the correctness of a lost cause its value if it conflicts with the particularism and the private interests of a state economically and politically influential.

Even though the European Union more inclined to discuss issues relating to human rights using concrete strategies such as boycotts or suspension of project funding , gets poor results , probably due to a common foreign policy

almost non-existent , which leads the individual states to act independently pursuing their own interests.

Before the inactivity of the organization responsible for the maintenance of peace , security and international cooperation , despite the conciliatory words of His Holiness the Dalai Lama , the Tibetan community in the peaceful even begin to ripple dissident voices who would like a more intransigent policy in order to an end to the inhuman treatment that the latter is forced to endure ; if these items would become more severe with time and tempers esasperassero this could lead to further acts of violence condemnable , final proof that not enough has been implemented and that the safeguards system of international security has failed. for the umpteenth time .

UN Secretary-General Javier Perez de Cuellar said, " is now spreading the belief that the principle of non-intervention in matters which are essentially within the jurisdiction of the states can not be regarded as a protective barrier behind which human rights can be violated with impunity by a massive or systematic " ; exactly such a belief should be developed , made tangible and binding.

To implement such an awareness is a necessary strengthening of international law and of organs able to guarantee it effectively.